

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ADIL HIRAMANNEK, et al.,
Plaintiffs,

v.

L. MICHAEL CLARK, et al.,
Defendants.

Case No. 5:13-cv-00228-RMW

**ORDER REGARDING AMENDED
MOTION TO SEAL**

Re: Dkt. No. 574

Before the court is an administrative motion to file under seal certain documents submitted in connection with plaintiffs' supplemental briefing and motion for reconsideration of this court's summary judgment order on their disability discrimination claims. Dkt No. 574. Because the court's Electronic Case Filing system does not allow pro se litigants to file documents electronically under seal, plaintiffs filed the documents that plaintiffs now wish to seal in the public docket of this case before filing a motion to seal. (See table below).

"Historically, courts have recognized a 'general right to inspect and copy public records and documents, including judicial records and documents.'" *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978)). Accordingly, when considering a sealing request, "a 'strong presumption in favor of access' is the starting point." *Id.* (quoting *Foltz v. State Farm Mut. Auto.*

1 *Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). Parties seeking to seal judicial records relating to
 2 dispositive motions bear the burden of overcoming the presumption with “compelling reasons”
 3 that outweigh the general history of access and the public policies favoring disclosure. *Id.* at 1178-
 4 79.

5 A protective order sealing the documents during discovery may reflect the court’s previous
 6 determination that good cause exists to keep the documents sealed, *see Kamakana*, 447 F.3d at
 7 1179-80, but a blanket protective order that allows the parties to designate confidential documents
 8 does not provide sufficient judicial scrutiny to determine whether each particular document should
 9 remain sealed. *See* Civ. L.R. 79-5(d)(1)(A) (“Reference to a stipulation or protective order that
 10 allows a party to designate certain documents as confidential is not sufficient to establish that a
 11 document, or portions thereof, are sealable.”).

12 In addition to making particularized showings of good cause, parties moving to seal
 13 documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to Civ. L.R.
 14 79-5(b), a sealing order is appropriate only upon a request that establishes the document is
 15 “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under
 16 the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and
 17 must conform with Civil L.R. 79-5(d).” Civ. L.R. 79-5(b). “Within 4 days of the filing of the
 18 Administrative Motion to File Under Seal, the Designating Party must file a declaration as
 19 required by subsection 79-5(d)(1)(A) establishing that all of the designated material is sealable.”
 20 Civ. L.R. 79-5(e)(1).

21 Plaintiffs’ primary concern over the documents in question seems to be that they may
 22 reveal plaintiffs’ medical conditions. Courts have recognized confidentiality in patients’ medical
 23 files. *See, e.g., Kamakana*, 447 F.3d at 1186. On the other hand, a party’s voluntary disclosure of
 24 otherwise confidential information can constitute grounds for denying a motion to seal. With these
 25 standards in mind, the courts rules on the instant motion as follows.

26 It appears that the instant motion to seal covers specific pages of multi-pages documents in
 27 PDF format that plaintiffs already placed in the public docket for this case. Plaintiffs do not assert
 28

that the remaining pages of the PDF documents at issue are confidential. The court's Electronic Case Filing system does not allow the court to restrict access to specific pages of a PDF document. Access may only be restricted, if at all, for a particular docket entry (e.g. 533-3) in its entirety. In connection with any future motions to seal, if plaintiffs wish to shield particular pages of their submissions from public view, they should e-file versions of the documents with redactions applied to particular pages in the public docket.¹ See Civ. L.R. 79-5(d)(1)(C). Plaintiffs may then submit the versions containing confidential pages to the court using another mechanism.

While the court could deny the instant motion for failure to provide redacted copies, the court finds that at least some of the pages that plaintiffs wish to seal warrant confidential treatment. Given the technical limitations of ECF, for any docket entries listed below for which a motion to seal has been "conditionally granted," the court will instruct the clerk to restrict electronic access only to participants in this case. **Within 14 days of the date of this order, plaintiffs shall re-file redacted versions of each document associated with each docket entry for which the motion to seal has been conditionally granted.** For example, because the court is conditionally granting plaintiffs' motion to seal as to ECF pages 33-34, 36-37, and 46 of the document filed at Dkt. No. 559-5, plaintiffs shall electronically file a version of the entire document at Dkt. No. 559-5 with redactions applied to pages 33-34, 36-37, and 46. The table below contains the court's rulings on particular documents.

<u>Motion to Seal</u>	<u>Document to be Sealed</u>	<u>Ruling</u>	<u>Reason/Explanation</u>
574	2/25/15 Adil Hirananeek's Request For Accommodations By Persons With Disabilities And Response (553-3 at ECF p. 19)	CONDITIONALLY GRANTED	References medical conditions. The court is not convinced at this time that the public's right of access to the underlying documents outweighs plaintiffs' interest in maintaining privacy.

¹ It does not appear that plaintiffs have submitted versions of these documents with the purportedly confidential pages redacted; if plaintiffs have submitted redacted versions, plaintiffs' motion does not indicate where to find the redacted versions.

574	4/23/2015 ADA response of Pam Juarez on behalf of Georgia Ku to Adil Hirananeek (553-3 at ECF pp. 21-23)	CONDITIONALLY GRANTED as to ECF p. 23. DENIED as to ECF pp. 21-22.	ADA request form references medical conditions. The court is not convinced at this time that the public's right of access to the underlying documents outweighs plaintiffs' interest in maintaining privacy. Correspondence does not reference medical conditions or any other information that could be used to "gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets." ²
574	7/12/2015 Adil Hirananeek's Request For Accommodations By Persons With Disabilities And Response (553-3 at ECF pp. 25-28)	CONDITIONALLY GRANTED	References medical conditions. The court is not convinced at this time that the public's right of access to the underlying documents outweighs plaintiffs' interest in maintaining privacy.
574	8/5/2015 ADA response of Georgia Ku to Adil Hirananeek (553-3 at ECF p. 30)	DENIED	Correspondence does not reference medical conditions or any other information that could be used to "gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets."
574	11/12/2013 Plaintiff Adil Hirananeek's email to Georgia Ku (559-4 at ECF p. 54)	DENIED	Correspondence does not reference medical conditions or any other information that could be used to "gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets."
574	4/23/2015 ADA response of Georgia Ku to Adil Hirananeek (559-4 at ECF pp. 160-61)	DENIED	Correspondence does not reference medical conditions or any other information that could be used to "gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets."

² *Kamakana*, 447 F.3d at 1179.

574	7/12/2015 Adil Hirananeek's Request For Accommodations By Persons With Disabilities And Response (559-5 at ECF pp. 33-34)	CONDITIONALLY GRANTED	References medical conditions. The court is not convinced at this time that the public's right of access to the underlying documents outweighs plaintiffs' interest in maintaining privacy.
574	7/23/2015 ADA response of Georgia Ku to Adil Hirananeek (559-5 at ECF pp. 36-37)	CONDITIONALLY GRANTED	References medical advice. The court is not convinced at this time that the public's right of access to the underlying documents outweighs plaintiffs' interest in maintaining privacy.
574	11/12/2015 Adil Hirananeek's Request For Accommodations By Persons With Disabilities And Response (559-5 at ECF p. 46)	CONDITIONALLY GRANTED	References medical conditions. The court is not convinced at this time that the public's right of access to the underlying documents outweighs plaintiffs' interest in maintaining privacy.

The court notes that the U.S. District Court is a public forum, and, to the extent that this order allows documents to be filed under seal, this order does not decide whether the documents that are the subject of the instant motion can be used in open court in any future proceedings.

IT IS SO ORDERED.

Dated: July 5, 2016



Ronald M. Whyte
United States District Judge